

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:)
Robert E. Callies et al.)
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Serial No.: 09/872,604)
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Filed: June 1, 2001)
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Group Art Unit: 3752)
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Examiner: Davis D. Hwu)
)
For: DISTRIBUTION TUBE ASSEMBLY)
FOR IRRIGATION)
)
)

Commissioner for Patents
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

On May 8, 2007 a new Examiner's Answer was filed in response to the Board's March 21, 2007 Order Returning Undocketed Appeal to Examiner. Pursuant to 37 CFR 41.39(b)(2), Applicants request that the appeal be maintained and submit this Reply Brief as set forth in 37 CFR 41.41.

Applicants note and appreciate the indication that the grounds of rejection based on Dunn 4,763,842 are withdrawn. Dependent claims 2, 13 and 21 which previously had been rejected solely on the basis of Dunn '842 are newly rejected in the Answer under Section 102(b) on the basis of Hane 4,162,041. Accordingly, this Reply Brief addresses the new grounds for rejection

raised in the Examiner's Answer with respect to dependent claims 2, 13 and 21 and provides additional comments to the outstanding rejections based on Hane '041.

Sections 1-5, 8 and 9 of the Appeal Brief are reincorporated herein. Since these sections are identical, it is believed that repetition of these sections is not required. Sections 6 and 7 of the Appeal Brief are also reincorporated to the extent they are applicable. In addition, these sections are supplemented as follows to address the new grounds of rejection raised in the Answer:

(6) NEW GROUNDS OF REJECTION RAISED IN EXAMINER'S ANSWER

(A) Claims 1-9, 13, 14, 16-19, 21 and 23-25 are rejected under 35 U.S.C. §102(b) as anticipated by Hane '041. Applicant reiterates separate arguments as to: (I) whether independent claim 1 and dependent claims 2-9, 13 and 14 are anticipated by Hane '041; and (II) whether independent claim 16 and dependent claims 17-19, 21 and 23-25 are anticipated by Hane '041.

(7) REPLY BRIEF ARGUMENT

(A) Claims 1-9, 13, 14, 16-19, 21 and 23-25 are rejected under 35 U.S.C. §102(b) as anticipated by Hane '041.

(I) Independent claim 1 and dependent claims 2-9, 13 and 14 are not anticipated by Hane '041.

In response to the Answer, Applicants respectfully emphasize that Hane '041 does not anticipate the claimed structure.¹

1. Applicants note a typographical error in their original Appeal Brief. On page 5, second paragraph, "does anticipate" should read – does not anticipate--.

The attached sketch compares the fluid passageways of the present invention and Hane '041; Applicants' invention is shown on the left, Hane '041 is shown on the right. Support for the sketch's rendering of Applicants' structure is found in paragraphs 0006 and 0030 of the application. These paragraphs describe the presence of an alternate supply line attached to the main supply line 12. The sketch of Hane '041 is a combination of master pipe 7, one main pipe 2 connected to master pipe 7 and one sub-pipe 3. Pipes 2 and 3 are joined by two connections 4 (from Fig. 3) and one connection 5 of a second type (from Fig. 5). Fig. 1 of Hane '041 shows that the sketch accurately depicts the construction taught in Hane. Given the statements made in the Examiner's Answer², it is believed there is no disagreement that the sketch illustrates both how Hane' 041 is constructed and how water flows through it.

The sketches also illustrate in color the fluid flow paths of the two devices. Applicants' device has two fluid flow paths, a first fluid flow path shown in orange and a second fluid flow path shown in green. Hane '041 has only one flow path, indicated in orange. This comparison plainly shows that Hane '041 has no structure that can distribute two separate fluid. He has only one fluid passageway.

Claim 1 requires a distribution tube assembly comprising "at least two fluid passageways defined therein to permit more than one fluid stream therethrough" (emphasis added). Hane '041 can permit only one fluid stream therethrough, as the sketch clearly shows. While Hane '041 has

2. On page 5 of the Examiner's Answer it is stated "[W]ater from main supply line 7 flows into first fluid passageways 2 and from each passageway 21 into second fluid passageways comprising hole 15 and pipe sections 3 (also considered as passages) via a fluid supply line 18 of connector 5 as seen in Fig. 5". Also on page 5 of the Answer, "As water from main supply 7 flows along one of the passageways 2, the water flows into the corresponding pipe (passageway) 3 via a supply line 18 connected to opening 13 of the connector 5 and proceeds to the second downstream end of pipe 3."

two separate pipes 2 and 3, because they are connected together by hole 18 at connection 5, in terms of fluid flow they are but one, single fluid passageway.

Claim 1 further requires “at least one of the fluid passageways being in fluid communication with the main supply line, at least another of the fluid passageways being in fluid communication with a second fluid supply line.” Clearly, Hane ‘041 has only one fluid supply line and that is master pipe 7; his two pipes 2 and 3 communicate solely with that one fluid supply line. Hane’s pipe 3 communicates in series with supply 7 through pipe 2. That does not mean pipe 3 communicates with a second supply line or that hole 18 becomes a second supply line for pipe 3. Pipe 3 is simply a branch of pipe 2. In terms of fluid passageways, pipe 3 is no different than two 90° turns in pipe 2.

In the Answer, the Examiner states (beginning at the last two lines of page 6) that “[T]he sections of 3 in conjunction with holes 15 of the connectors 5 form a ‘fluid passageway’ that permits flow from the upstream end of the apparatus to the downstream of the apparatus...”. Further on page 7 the Examiner states “[W]ater from pipes 2 flows into pipes 3 via flow passage 18 of connector 5 and thus passage 18 is a second fluid supply line which supplies water to pipes 3.”

Thus, the Examiner maintains that the presence of two pipes 2, 3 meets the claim requirement of at least two fluid passageways. Applicants submit this is incorrect. The presence of two pipes does not create two fluid passageways when those pipes are in fluid communication with one another. The two pipes 2, 3 of Hane ‘041 become one, single fluid passageway because they are put in fluid communication with one another by hole 18 and holes 15. It does not matter how many branches are connected to pipe 2. So long as those branches fluidly communicate

with pipe 2, as in Hane '041, there is only one passageway. Only one fluid can be supplied by Hane's pipes 2, 3. In terms of the sketch, only an orange fluid can flow in Hane '041; there is no way to simultaneously supply the green fluid in addition to the orange fluid.

It is submitted the Examiner incorrectly focuses on the number of pipes shown in Hane '041, rather than on the fluid passageways defined by those pipes. When the focus is properly laid on the fluid passageways as opposed to the structures which define them, it is evident there is only one passageway in Hane '041. Claim 1 calls for "at least two fluid passageways". Hane '041 cannot anticipate claim 1 when it lacks this claimed feature.

Further, the last line of the paragraph on page 7 of the Examiner's Answer states "The passage 18 of connector 5 can also be considered as an 'alternate supply'." This is apparently intended to meet the language of Claim 1 which recites that at least another of the fluid passageways is in fluid communication with a second fluid supply line. It is respectfully submitted the "hole" 18 in Hane '041 cannot be interpreted as a "second fluid supply line" as called for in claim 1. The second fluid supply line as recited in claim 1 clearly cannot be the same supply line as the earlier recited main supply line. The alleged "second supply line" 18 in Hane is merely a "hole" 18 which allows the fluid to flow from the main pipe 2 to the sub-pipe 3. It is evident that the main pipe 2 and the subpipe 3 are each supplied by the same supply line. There is no getting around the fact that one, and only one, fluid can be dispensed from the Hane device. Hane's structure simply does not contain the elements called for in claim 1.

For all of the above reasons, Hane '041 is respectfully believed to lack recited features in independent claim 1 and its corresponding dependent claims 2-9, 13 and 14. Accordingly, reversal of this rejection and allowance of these claims are respectfully requested.

(II) Independent claim 16 and dependent claims 17-19, 21 and 23-25 are not anticipated by Hane '041.

In response to the rejection of claims 16-19, 21 and 23-25, Applicants respectfully reiterate the reasons discussed above with respect to independent claim 1 and its corresponding dependent claims, as all such claims were rejected on the same basis for anticipation by Hane '041. Applicants respectfully request withdrawal of this rejection and allowance of claims 16-19, 21 and 23-25.

Conclusion

For all the above reasons together with the reasons articulated in the Appeal Brief, independent claims 1 and 16 and their corresponding dependent claims 2-9, 13, 14, 17-19, 21, and 23-25 are respectfully believed to be distinguishable over the cited references in addition to dependent claims 10-12 and 20 which are already indicated as allowable.

Respectfully submitted,

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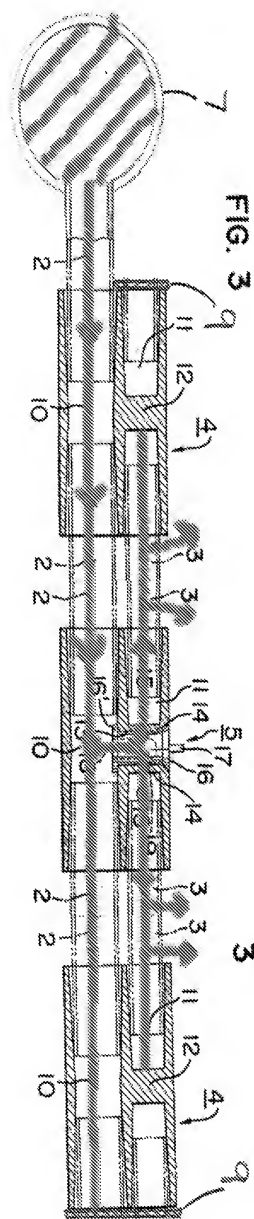
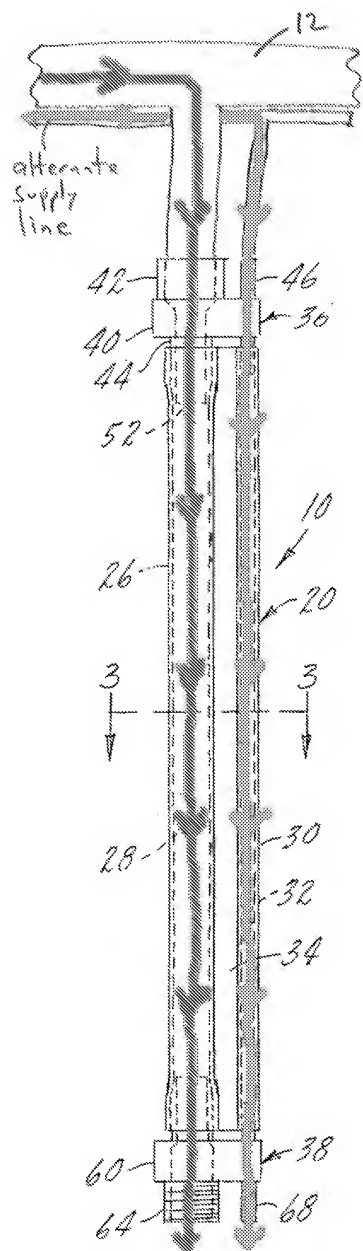


FIG. 3

FIG. 5